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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,404	11/29/2001	Padmanabhan Sreenivasan	499.074US2	3328

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EXAMINER

SUAZO, RAINIER A

ART UNIT PAPER NUMBER

2144

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/997,404

Applicant(s)

SREENIVASAN ET AL.

Examiner

Rainier Suazo

Art Unit

2144

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This application has been examined. Claims **1 and 2** presented for examination.

#### *Preliminary Amendment*

2. The preliminary amendment filed on 11/29/2001 was entered.

#### *Priority*

3. This application claims benefit of the provisional application **60/189,864** (**03/16/2000**).

The effective filing date for the subject matter defined in the pending claims, which has support in Provisional Application No. **60/189,864** is **03/16/2000**. The effective filing date for any new subject matter defined in the claims not previously disclosed in Provisional Application No. **60/189,864** is **03/16/2000**.

#### *Claim Rejections - 35 USC § 102(e)*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 2144

Claims **1 and 2** are rejected under 35 U.S.C. 102(e) as being anticipated by Alexander et al. (U.S. Patent Number **6,189,111 B1**), hereinafter referenced to as Alexander.

Alexander taught a method and system to enhance survivability of system software components, even in the event of catastrophic failure of the computing element on which they reside. See abstract.

Regarding claim **1**, Alexander taught a system for implementing a failover policy comprising: a cluster infrastructure for managing a plurality of nodes; a high availability infrastructure for providing group and cluster membership services (cluster membership service or CLMS) (**column 5 lines 35-40**); and a high availability script execution component operative to receive a failover script (notification of selection or designation as recipient node) and at least one failover attribute (failing node information and harvested data) and operative to produce a failover domain (recognizing the failing node and removing it from the bitmap) (**column 5 lines 40-50, column 6 lines 19-21, column 8 lines 40-42, column 9 lines 32-33**). Note that Alexander teaching describe producing a failover domain when a failing node is recognized and a notification is send to the other nodes which represents a failover domain that by definition is the area of control to which the system will automatically transfer activity to a standby server upon failure of an active server.

Art Unit: 2144

Regarding claim 2 Alexander taught a method for determining a target node for a failover, comprising: executing a failover script, said script producing a failover domain, said failover domain having an ordered list of nodes (**column 5 lines 40-47, fig. 3 and column 9 lines 40-53 [ordered list of nodes]**); receiving a failover attribute (**column 5 lines 54-65**); and based on the failover attribute and failover domain selecting a node upon which to locate a resource (**column 5 lines 50-52, column 9 lines 26-39 and column 10 lines 48-57**).

4. Since all the limitations of the claimed invention were disclosed by Alexander, claims 1 and 2 are rejected.

**Conclusion**

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached PTO-892 for details.
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rainier Suazo whose telephone number is (571) 272-3931. The examiner can normally be reached on Monday through Friday, 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Cuchlinski can be reached on (571) 272-3925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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